Supreme Court, U.S.
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NO. 91-1781

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1991

STATE OF ALABAMA,

PETITIONER,

V.

SYLVESTER BROOKS,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT AND COURT
OF CRIMINAL APPEALS OF ALABAMA

SUPPLEMENT TO THE PETITION OF THE STATE OF ALABAMA

OF

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SUMMARY OF THE SUPPLEMENTAL ARGUMENT

Four days after the mailing of the petition, the Petitioner learned that State v Ingram, (104 Or. App. 389, 802 P.2d 656 [1990], review granted 311 Or. 222, 810 P.2d 854), cited in the petition, has been reversed by the Oregon Supreme Court. State v Ingram, 313 Or. 139, ___ P.2d ___ 1992 W.L. 82118 (Or) (1992) In

reaching its conclusion that a "persons present" search warrant violated Oregon Statutes, the Oregon Supreme Court relied on its understanding that such warrants are void under the Fourth Amendment. Therefore, the Oregon Supreme Court, like the Alabama Appellate Courts but contrary to the holdings of the appellate courts of many other states, holds that "persons present" search warrants violate the Fourth Amendment.

SUPPLEMENTAL ARGUMENT

In its petition, which was mailed to this Honorable Court on May 1, 1992, the State of Alabama lists Oregon as one of the states whose appellate courts have held that the Fourth Amendment does not prohibit warrants for the search of persons who can be described only by their presence at a particular place. See petition , pages 19 and 27-28. The basis of our statement relative to Oregon was

State v Ingram (104 Or. App. 389, 802 P. 2d 656 [1990], review granted 311 Or. 222, 810 P.2d 854). Although we noted that review had been granted, we stated on advice, that no decision was expected soon from the Oregon Supreme Court. See petition, note 5, page 28.

On May 5, 1992, we learned that on April 23, 1992, the Oregon Supreme Court issued an opinion reversing the decision of the Oregon Court of Appeals. State v. Ingram, 313 Or. 139, ___ P. 2d ___, 1992 W.L. 82118 (Or) (1992).

Although the Oregon Supreme Court asserted that its decision was based on Oregon statutory law,[1] the Court interpreted the relevant Oregon statute to be, ". . at least as restrictive as the constitutional prohibition against

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1. ". . We reverse on the basis of defendant's statutory argument and , accordingly do not reach his constitutional claim. . . ." (1992 W.L. 82118, pages 1-2)

general search warrants . . . ." (1992 W.L. 82118, page 5). Then relying on the Fourth Amendment to the United States Constitution (quoted in full in footnote 5, ibid) and cases interpreting the Fourth Amendment , the Oregon Supreme Court held that a warrant ordering the search of persons described only as present at a place is constitutionally void.

Thus, the Oregon Supreme Court, like the Alabama Appellate Courts, has ruled that the Fourth Amendment forbids "persons present warrants". This holding is in sharp conflict with the rulings of other state appellate courts. See pages 26-29 of the petition.

CONCLUSION

It is apparent that there is a very sharp split of authority among the various states on the important issues raised by the petition. For this reason, the writ should issue.

Respectfully submitted,

JAMES H. EVANS
ATTORNEY GENERAL
BY:

_____
JOSEPH G.L. MARSTON, III
ASSISTANT ATTORNEY GENERAL

ATTORNEYS FOR THE PETITIONER

CERTIFICATE OF SERVICE

I, Joseph G. L. Marston, III, Assistant Attorney General of Alabama, a member of the Bar of the Supreme Court of the United States and one of the Attorneys for the State of Alabama, Petitioner, hereby certify that on this _____ day of May, 1992, I did serve the requisite number of copies of the foregoing on the Attorney for Sylvester Brooks, Respondent, by mailing the same to said Attorney first class postage prepaid and addressed as follows:

Honorable Michael D. Cook
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